

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TODD LEE KINNAMON,  
Plaintiff,  
v.  
C. CLAUSEN, et al.,  
Defendants.

No. 1:23-cv-00168-ADA-CDB (PC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS AND DENYING  
PLAINTIFF'S MOTION TO PROCEED IN  
FORMA PAUPERIS

(ECF Nos. 2, 5)

ORDER DENYING PLAINTIFF'S MOTION  
FOR A HEARING ON IN FORMA  
PAUPERIS STATUS

(ECF No. 6)

**THIRTY (30) DAY DEADLINE**

Plaintiff Todd Lee Kinnamon is a state prisoner proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983. The matter was assigned to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On February 6, 2023, Plaintiff filed an application to proceed in forma pauperis ("IFP") pursuant to 28 U.S.C. § 1915. (ECF No. 2.) On February 13, 2023, the Magistrate Judge issued findings and recommendations recommending that the Court deny Plaintiff's IFP application because Plaintiff has had at least three prior "strikes" and was not in imminent danger of serious

1 physical injury at the time he filed the action. (ECF No. 5.) The findings and recommendations  
2 advised Plaintiff that he could file objections within fourteen days. (*Id.* at 4.) On February 24,  
3 2023, Plaintiff filed a “Motion for Hearing on In Forma Pauperis.” (ECF No. 6.) In that motion,  
4 Plaintiff requests a hearing because he “can prove serious injury.” (*Id.* at 1.)

5 To the extent that Plaintiff’s February 24, 2023, motion constitutes an objection to the  
6 Magistrate Judge’s findings and recommendations, the Court finds it unpersuasive. At this stage  
7 in the proceedings, Plaintiff is not required to “prove serious injury.” Rather, he must allege facts  
8 indicating that he was in imminent danger of serious injury at the time he filed this action. The  
9 fact that Plaintiff alleges he suffered an injury on January 10, 2020 – over three years before  
10 filing his complaint – is not sufficient to meet this standard. Moreover, Plaintiff is not entitled to  
11 a hearing on the issue of IFP status. Local Rule 230(l) provides, “All motions, except motions to  
12 dismiss for lack of prosecution, filed in actions where one party is incarcerated and proceeding in  
13 propria persona, shall be submitted upon the record without oral argument unless otherwise  
14 ordered by the Court.”

15 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a  
16 de novo review of this case. Having carefully reviewed the entire file, the Court finds the  
17 findings and recommendations to be supported by the record and proper analysis.

18 Accordingly,

- 19 1. The findings and recommendations issued on February 13, 2023, (ECF No. 5), are  
20 adopted in full;
- 21 2. Plaintiff’s application to proceed in forma pauperis, (ECF No. 2), is denied;
- 22 3. Plaintiff’s motion for a hearing on in forma pauperis status, (ECF No. 6), is  
23 denied; and

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1           4.     **No later than thirty (30) days following the date of service of this order,**

2           Plaintiff must either pay the \$402.00 filing fee in full or voluntarily dismiss this  
3           case. Failure to comply with this order will result in dismissal for failure to  
4           comply with a court order and failure to prosecute.

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7     IT IS SO ORDERED.

8     Dated:   March 27, 2023

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UNITED STATES DISTRICT JUDGE